

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: TOUCH AMERICA SERVICES, INC., AND TOUCH AMERICA, INC.	DOCKET NO. WRU-01-19-3468
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ORDER GRANTING WAIVER

(Issued May 18, 2001)

On April 13, 2001, Touch America Services, Inc. (TASI), and Touch America, Inc. (Touch America), filed with the Utilities Board (Board) a request for a waiver of 199 IAC 22.23(2). The subrule requires individual customer verification to change the customer's local or long distance provider. TASI is proposing to sell its assets, including its interLATA and intraLATA customer base, to Touch America. Touch America is the indirect parent of TASI and since the approval of the sale of TASI to Touch America by the Federal Communications Commission on June 30, 2000, Touch America has been serving Iowa customers transferred from Qwest Corporation through TASI. TASI requests that the Board cancel its registration in Iowa once the sale is complete on June 30, 2001.

TASI currently has customers in Iowa and as part of a corporate restructuring those customers will be transferred to Touch America. TASI is currently doing business as "Touch America" and would continue to do business under this name. TASI and Touch America stated that the transfer will not affect the rates or service

provided to customers. The companies state that even though the sale from TASI to Touch America will require submission of preferred carrier change requests, the transaction will be transparent to customers.

TASI and Touch America state that it is very costly and unduly burdensome for the companies to obtain authorization and verification from each subscriber due to the number of affected customers. The companies also request that they not be required to provide notice to customers of the transfer, since there will be no change in customer service.

Subrule 199 IAC 22.23(2) requires that all of the customers of TASI give prior written or recorded verification before they can be lawfully transferred. TASI and Touch America are requesting a waiver of that requirement. TASI has a significant number of customers and TASI and Touch America stated that it would be an undue hardship for Touch America to obtain customer verification from those customers. The rule also requires customers be given notice of the transfer and the companies are requesting waiver of this requirement.

The Board finds that the waiver request should be granted as it complies with the provisions of 199 IAC 1.3. The waiver is similar to the waiver granted in Docket No. SPU-99-29, when GTE Midwest Incorporated was purchased by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom. In that docket, the Board found that it would be an undue hardship for a company in these circumstances to obtain the individual waivers. This is in light of the minimal impact that the transfer

will have on customers and the cost to the companies to notify and obtain verification from all customers.

The Board finds that the waiver will not affect the substantial legal rights of customers. The verification rules are intended to prevent the unauthorized change of long distance service where the acquiring company has no business relationship to the current provider and the change is to acquire customers fraudulently. In this instance, the transfer is part of a corporate restructuring and has been approved by the Federal Communications Commission.

The Board finds that the verification requirement is not specifically mandated by statute or other provision of law under the circumstances presented. Iowa Code § 476.103 (2001) gives the Board authority to promulgate rules "to protect consumers from unauthorized changes in telecommunications service." Subrule 199 IAC 22.23(2) implements the statutory prohibition against unauthorized transfers. The rule is designed to prevent fraudulent transfers of customers. Where the transfer is part of a corporate restructuring and will be transparent to customers, the Board finds that statutory verification is not required.

The Board finds substantially equal protection of public health, safety, and welfare will be afforded by means other than the waived rule. The transaction is the merging of companies within a corporate structure and customers will not be affected or be aware of the transfer. Additionally, in a competitive environment, customers have alternatives if they are not satisfied with the service of Touch America. For the

above reasons, the Board will waive the provisions of 199 IAC 22.23(2) as requested by TASI and Touch America.

IT IS THEREFORE ORDERED:

The request for waiver of 199 IAC 22.23(2) filed by Touch America Services Inc., and Touch America, Inc., on April 13, 2001, to allow the transfer of customers from Touch America Services, Inc., to Touch America, Inc., without written or recorded verification, or customer notification, is granted.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Sharon Mayer
Acting Executive Secretary, Asst. to

/s/ Diane Munns

Dated at Des Moines, Iowa, this 18th day of May, 2001.